THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEBORAH D. PETERSON, et al.,	
Plaintiffs,	
v.	Civil Action No. 01-2094 (RCL)
THE ISLAMIC REPUBLIC OF IRAN, et al.,	
Defendants.	

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

INTRODUCTION

In an attempt to satisfy the judgment previously rendered in this case, plaintiffs seek an order from this Court appointing a receiver to replace Iran at the Iran-United States Tribunal ("Tribunal") established by the Algiers Accords, an international agreement entered into by the United States and Iran to resolve the Iranian hostage crisis. See Mot. for Appt. of Receiver, Dkt. No. 260. The United States submits this Statement of Interest pursuant to 28 U.S.C. § 517[1] to describe the important sovereign immunity and foreign policy interests implicated by plaintiffs' request.

As an initial matter, plaintiffs' motion, which expressly seeks the appointment of a receiver to litigate claims asserted by Iran against the United States at the Tribunal for an award of funds from the United States Treasury, violates fundamental principles of sovereign immunity. This Court, in Flatow v. The Islamic Republic of Iran, 74 F. Supp. 2d 18 (D.D.C. 1999), previously decided that sovereign immunity bars the attachment of funds held by the United States for payment of awards to Iran at the Tribunal. While plaintiffs seek appointment of a receiver in lieu of attachment, this alternative approach does not alter the impact on the sovereign immunity of the United States. As this Court has informed these very plaintiffs, they cannot "seek to use a receiver to do *indirectly* what they cannot do *directly*." Peterson, 563 F. Supp. 2d 268, 278 (D.D.C. July 7, 2008).

Moreover, plaintiffs' expansive request seeks to involve this Court in the direct operation and management of the Tribunal process established by the Algiers Accords, where the Court

[1] Section 517 of Title 28 of the United States Code provides that the "Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517.

would appoint and maintain jurisdiction over a receiver's activities to the exclusion of Iran. As the D.C. Circuit has recognized, the operation and implementation of international agreements is a matter left to the exclusive province of the political branches. Thus, this Court's ordinarily broad jurisdiction over the activities of a receiver is restricted when such jurisdiction would interfere with the executive's operation and implementation of such an agreement. This conclusion is buttressed by the prudential considerations that accompany a request to remove a foreign nation from an agreement negotiated by sovereigns to end an international crisis.

The United States abhors the actions that gave rise to the judgment in the underlying case. The United States is nonetheless compelled to submit this Statement of Interest because the law does not support Plaintiffs' motion, and the relief they seek would harm the foreign policy interests of the United States.

BACKGROUND

I. THE ALGIERS ACCORDS AND THE ESTABLISHMENT OF THE IRAN-U.S. CLAIMS TRIBUNAL

In November of 1979, in response to the seizure of the U.S. embassy in Tehran and the detention of American hostages, President Carter exercised his powers under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701–1702, and "blocked all property and interests in property of the Government of Iran * * * subject to the jurisdiction of the United States." Exec. Order No. 12170, 44 Fed. Reg. 65,729 (Nov. 14, 1979); see 31 C.F.R. § 535.201. In January 1981, the hostage crisis was resolved with the conclusion of the Algiers Accords. As part of the Accords, the United States has agreed in principle to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979." 20 I.L.M. 223, 224 (Jan. 1981). The United States further "commit[ted] itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction." Id. Subsequent

Executive Orders and regulations implementing the Accords unblocked the majority of Iranian property that had been blocked pursuant to Executive Oder 12170, and directed its transfer to Iran.

The Accords also established the Iran-U.S. Claims Tribunal ("Tribunal") in the Hague for resolving, inter alia, claims of the United States and Iran against each other concerning their respective performance under the Accords. 20 I.L.M. at 231-32. Under the Accords, awards of the Tribunal are final, binding, and enforceable in the courts of any nation. Id. at 232. The United States subjected itself to the jurisdiction of the Tribunal solely and exclusively for the purpose of dealing with claims by Iran and Iranian nationals. Id. at 231. Nothing in the Accords waives the sovereign immunity of the United States in Tribunal-related matters before U.S. courts or with respect to claims by U.S. citizens.

II. PROCEDURAL BACKGROUND

Plaintiffs are survivors and family members of those killed in the Marine barracks bombing in Beirut, Lebanon on October 23, 1983. In 2001, plaintiffs brought suit against the Islamic Republic of Iran ("Iran") in this Court, ultimately resulting in a default judgment and an award of damages in their favor. See Peterson v. Islamic Republic of Iran, 515 F. Supp. 2d 25 (D.D.C. 2007); 264 F. Supp. 2d 46 (D.D.C. 2003). Plaintiffs now seek to collect on this judgment through the appointment of a receiver by the district court for Iran "in which the subject matter of the receivership are [sic] all of the pending claims, awards, verdicts, judgments, causes of action, and other claims for relief, which Iran has against the United States, arising out of and based upon 'The Algiers Accord,' and currently pending before the Iran-U.S. Claims Tribunal (hereinafter collectively 'Tribunal Claims')." See Mot. for Appt. of Receiver at 1-2, Dkt. No. 260. The power of the receiver at the Tribunal would be sweeping, as the receiver would be "authorized to file any pleadings, papers and other matters in the place and stead of

Iran; prosecute all Tribunal Claims in the name of Iran; hire and retain attorneys . . . in the place and stead of Iran; take and prosecute matters to trial . . . as required by the Tribunal itself; and take any other action as if Iran . . . ." Id. at 2.

Plaintiffs primarily argue that they are entitled to a receivership due to the broad power of the district court to appoint a receiver to protect the property of an absent debtor for the benefit of creditors. Plaintiffs assert that the Court need not reach the question of the sovereign immunity of the United States in granting this motion and argue that recent amendments to the Foreign Sovereign Immunities Act (FSIA), Pub. L. 110-181, Div. A, Title X, § 1083(b)(3), 122 Stat. 341 (Jan. 28, 2008), have removed prior impediments to obtaining these funds. Specifically, they assert that the new provisions 28 U.S.C. § 1605A(a)(1) and § 1610(g) permit recovery of funds owed, or potentially owed, to Iran from awards by the Tribunal.

ARGUMENT

Plaintiffs seek a court order appointing a receiver to serve in place of Iran at the Tribunal who may then collect any monies due Iran from purportedly present[2] or hypothetical future awards by the Tribunal. According to plaintiffs, the purpose of the appointment of a receiver would be to permit the Court to ensure that all Tribunal awards are preserved for the benefit of plaintiffs, rather than being paid to Iran. Although plaintiffs describe their request as a "classic enforcement action," it is nothing of the sort. Plaintiffs request that Iran be replaced with their own representatives before an international arbitral tribunal created by international agreement, who would then attempt to litigate against the United States for an award of funds from the United States Treasury. No court has ever endorsed such an invasion of sovereign immunity, let

[2] As the United States has explained in opposing a similar request in the Central District of California, there are no outstanding Tribunal decisions in Iran's favor awarding damages against the United States. See Statement of Interest of the United States in Greenbaum v. Iran, 2:08-CV-00740 (C.D. Cal.) (Dkt. #65).

alone the intrusion into foreign policy, the treaty powers of the political branches, and the operation of an international tribunal that such a remedy would represent.

This Court has already rejected prior attempts by these plaintiffs to appoint a receiver over assets held by sovereign entities, and has previously rejected an attempt by plaintiffs in an identical context to attach funds in the United States Treasury that were earmarked for payment of a Tribunal award. Taken together, these decisions demonstrate that plaintiffs' present request should be similarly rejected.

I. APPOINTMENT OF A RECEIVER FOR IRAN OVER AWARDS AGAINST THE UNITED STATES WOULD VIOLATE THE SOVEREIGN IMMUNITY OF THE UNITED STATES

It is axiomatic that "[a]bsent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." Dep't of the Army v. Blue Fox, Inc., 525 U.S. 255, 260 (1999) (quoting FDIC v. Meyer, 510 U.S. 471, 475 (1994)). Sovereign immunity operates as a jurisdictional bar. See Meyer, 510 U.S. at 475. Sovereign immunity principles apply with equal force to supplementary procedural attempts by creditors to obtain government funds or property to collect on a debt. See Blue Fox, 525 U.S. at 257; FHA v. Burr, 309 U.S. 242, 243 (1940); Buchanan v. Alexander, 45 U.S. 20, 21 (1846); Arizona v. Bowsher, 935 F.2d 332, 334 (D.C. Cir. 1991). Procedural vehicles for enforcing judgments are types of "civil process" for the collection of a judgment, and are thus a type of suit. See Franchise Tax Bd. v. United States Postal Serv., 467 U.S. 512, 518 (1984) ("'Garnishment and attachment commonly are part and parcel of the [civil] process, provided by statute, for the collection of debt. . . .'") (quoting Burr, 309 U.S. at 245).

For purposes of sovereign immunity in the collection context, the relevant inquiry does not depend upon whether the funds or property sought are subject to ownership claims by another party. Instead the analysis turns upon whether the funds or property sought are in the possession

or under the control of the U.S. government. See, e.g., Blue Fox, 525 U.S. at 263 (holding that seizure or attachment of funds "in the hands of the Government" requires sovereign immunity waiver); Buchanan, 45 U.S. at 20-21 ("So long as money remains in the hands of a disbursing officer, it is as much the money of the United States, as if it had not been drawn from the treasury."); Aut. Sprinkler Corp. v. Darla Envtl. Specialists, 53 F.3d 181, 182 (7th Cir. 1995) ("The principle of governmental immunity is simple: anyone who seeks money from the Treasury needs a statute authorizing that relief."); Bowsher, 935 F.2d at 334 (sovereign immunity barred creditors from attaching "trust fund" established in Treasury to hold money owed to others); Haskins Bros. & Co. v. Morgenthau, 85 F.2d 677, 681 (App. D.C. 1936) (applying the United States' immunity as sovereign to federal funds even though they were earmarked for a specific purpose).

In Flatow v. The Islamic Republic of Iran, 74 F. Supp. 2d 18 (D.D.C. 1999), this Court applied these principles in rejecting an attempt by a creditor to attach funds held by the United States Treasury Judgment Fund that were earmarked for payment of a Tribunal award to Iran. According to this Court, "funds held in the U.S. Treasury—even though set aside or 'earmarked' for a specific purpose—remain the property of the United States until the government elects to pay them *to whom they are owed*." Id. at 21 (emphasis added) (citing Buchanan, 45 U.S. at 21, and Blue Fox, 525 U.S. 255); see also Aut. Sprinkler, 53 F.3d at 181 ("[S]overeign immunity prevents a judge from directing how, when, and to whom the United States should distribute funds."); Haskins Bros., 85 F.2d at 681 (recognizing that it is not the funds themselves that are immune from suit, but the United States and its "power of control and disposition"). As it was undisputed that the funds plaintiff sought to attach were held in the United States Treasury, the Court granted the United States' motion to quash the writ of attachment.

The only relevant distinction between Flatow and the present case is that the plaintiffs

here have requested the appointment of a receiver rather than direct attachment of Treasury funds. However, as this Court previously informed these very plaintiffs in a July 7, 2008, Opinion, that distinction is one without a difference. See Peterson, 563 F. Supp. 2d 268 (D.D.C. July 7, 2008). In that Opinion, this Court denied the plaintiffs' request to appoint a receiver to obtain funds held by sovereign entities. See id. at 278. The Court recognized the request as an attempt to avoid the bar posed by sovereign immunity to direct attachment of the funds, and found no legal distinction that would permit a receiver to obtain those funds indirectly. See id. Accordingly, in light of the recognized inability of the plaintiffs to attach directly funds held by the Treasury, they should not be permitted by means of the current motion "to use a receiver to do *indirectly* what they cannot do *directly*."[3] Id. at 278; see also McGrew v. McGrew, 38 F.2d 541, 544 (D.C. Cir. 1930) (holding that district court erred in ordering individual's government salary to be paid over to a receiver, as "the creditor would accomplish indirectly what he is forbidden to do directly"); Applegate v. Applegate, 39 F. Supp. 887, 889 (D.C. Va. 1941) (holding that plaintiff cannot obtain through appointment of a receiver what he is forbidden from attaching directly).

Plaintiffs candidly acknowledge that their expansive request for a receiver at the Tribunal is an attempt to avoid the bar to direct attachment of the funds sought. See Pls.' Mem. in Supp. at 5-6 ("Iranian Judgment creditors attempted to recover through a direct levy upon the I-USCT

[3] This Court also rejected plaintiffs' argument that sovereign immunity was irrelevant to plaintiffs' motion because the receiver would simply "stand in the shoes of Iran," as well as plaintiffs' assertion that the Court could ignore the sovereign immunity issue "unless and until the receivers take enforcement action." 563 F. Supp. 2d at 277, 278; see also id. at 275 n.5 ("Essentially, plaintiffs maintain that . . . sovereign immunity need not be determined unless and until the receivers take enforcement action . . . . This Court finds each of plaintiffs' arguments wholly without merit."). The Court recognized the need to resolve the issue in the first instance, as "[j]urisdiction is a prerequisite to the appointment of a receiver and therefore any receivership ordered by a court that lacks subject matter jurisdiction is void." Id. at 277.

awards themselves, which failed for a whole host of reasons, which principally consisted of the sovereign immunity of the United States as the obligor under the awards. Plaintiffs therefore approach this remedy in light of the challenges and options posed by Flatow. . . ."). Nor could they, given the fact that their request for a receiver to stand in the shoes of Iran at the Tribunal expressly reveals plaintiffs' desire to pursue direct litigation against the United States with the goal of receiving funds held by the U.S. Treasury.[4] See id. at 12 ("Plaintiffs seek the appointment of a receiver . . ., whose responsibility is to *continue and complete litigation of these claims*, settle and resolve the same, turn these claims into some type of cash recovery, if possible, the effect of which would be to generate a recovery for and on behalf of the Plaintiffs themselves.") (emphasis added); id. ("On a more fundamental basis, the substitution of the receiver for Iran in these case may prompt a faster settlement (albeit at a discount) in which the beneficiaries of the settlement would be the victims of terror, and not the terrorist.").

The remaining question, then, is whether the United States has waived sovereign immunity with respect to plaintiffs' request. Waivers of sovereign immunity "must be unequivocally expressed in statutory text . . . and will not be implied." Lane v. Pena, 518 U.S. 187, 192 (1996) (citations omitted). Such waivers must be "construed strictly in favor of the sovereign," and not "enlarge[d] . . . beyond what the language requires." Ruckelshaus v. Sierra Club, 463 U.S. 680, 685 (1983) (internal quotation marks and citations omitted); see also Blue

[4] The analysis in this Statement assumes, *arguendo*, that it would even be possible to appoint a receiver in the present case, where the receiver would not simply litigate to protect already-acquired property, but would actually litigate to acquire *additional* property by virtue of potential future claims before the Tribunal—property that is currently in the possession of the United States. No receivership case cited by the plaintiffs stands for such a remarkable proposition. Cf. Eastern Trust and Banking Co. v. Am. Ice Co., 14 App. D.C. 304, 1899 WL 16405 *14 (1899) ("[I]t could hardly have been expected that the court below would have appointed a receiver to claim possession of the premises in hostility to the title adjudged to be in the Government of the United States. This of itself would have been sufficient ground upon which to refuse the appointment of a receiver.").

Fox, 525 U.S. at 261 (waivers must be "strictly construed . . . in favor of the sovereign"). Any ambiguities in the statutory text must be resolved in favor of immunity. United States v. Williams, 514 U.S. 527, 531 (1995). Here, the pivotal issue is that the United States has not waived sovereign immunity over funds held within the U.S. Treasury—the source of funds that would presumably be available to pay any Tribunal award in Iran's favor. See, e.g., Weinstein v. Islamic Republic of Iran, 274 F. Supp. 2d 53, 58 (D.D.C. 2003) (quoting Flatow, 74 F. Supp. 2d at 21).

Plaintiffs make two arguments to support a finding of waiver in the present case. The first is that the United States waived sovereign immunity in the Algiers Accords establishing the Tribunal, which state, inter alia, that "[a]ny award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws." Pls.' Mem. in Supp. at 7, 25. As this Court has recognized, however, neither this language, nor any other language in the Accords, establishes an "unequivocal expression" of waiver of the sovereign immunity of the United States with respect to third party creditors. See Flatow, 74 F. Supp. 2d at 25 ("[T]he Accords do not authorize third party creditors to enforce judgments for Iran. Absent a clear and unequivocal statement of consent to such a suit, this Court declines to imply one.").

Plaintiffs next argue that recent amendments to the FSIA have removed prior impediments to obtaining the funds allegedly owed to Iran. Specifically, they assert that the new provision of 28 U.S.C. § 1610(g)(2) removes the United States' immunity from suit by its own citizens.

Section 1610(g) provides in relevant part:

(g) Property in certain actions.–

(1) In general.– Subject to paragraph (3), the property of a foreign state

> against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, . . .
>
> **(2) United States sovereign immunity inapplicable**.– Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act [TWEA] or the International Emergency Economic Powers Act [IEEPA].

Plaintiffs' argument is based on a misreading of this section. As an initial matter, section 1610(g) applies only to judgments "entered under section 1605A," a statute passed after judgment was entered in favor of the plaintiffs in this case. See Pub. L. No. 110-181, Div. A, Title X, § 1083(a)(1), 122 Stat. 338 (2008). Even if the judgment had been entered under section 1605A, however, it is error to read section 1610(g)(2) as a waiver of sovereign immunity that would permit the relief requested by the plaintiffs. Subsection (g)(1) of the statute speaks to attachment in aid of execution of "the property of a foreign state." Subsection (g)(2) then facilitates the attachment of such property by indicating that regulation of that property by the United States pursuant to TWEA or IEEPA would not serve as a bar to such attachment. Nothing in this text indicates that the United States expressly intended to waive sovereign immunity with respect to United States property, such as funds held in the United States Treasury, or to lawsuits brought against it by United States citizens. In fact, Congress intended exactly the opposite. See, e.g., Conf. Rep. on H.R. 1585, Nat'l Defense Authorization Act for Fiscal Year 2008, 153 Cong. Rec. H14869-01, H14942 (Dec. 6, 2007) ("The provision would further provide that a foreign state's property would not be immune from execution upon a

judgment due to the property being regulated by the United States Government under the Trading With the Enemy Act or the International Emergency Economic Powers Act . . . . *The conferees stress that this provision should not be construed in any way as support for the use of United States appropriated funds to satisfy a claim brought under this section*.") (emphasis added); see also NANDA AND PANSIUS, 1 LITIGATION OF INT. DISPUTES IN U.S. COURTS § 3:53 (2008) ("That same report . . . expressly reiterates that property 'appropriated' by the United States, as distinguished from regulated by the United States, is not available to pay section 1605A judgments. The text assumes that the word 'appropriated' includes property that the United States owns notwithstanding that the property came from the judgment debtor, as distinguished from merely funds 'appropriated' by Congress.").

Simply put, any Tribunal awards would be paid from U.S. property—specifically, U.S. Treasury funds—and not from foreign property "regulated by the United States Government by reason of action taken against that foreign state under [TWEA] or [IEEPA]." Cf. Flatow, 74 F. Supp. 2d at 22. The United States' decision to arbitrate claims before the Iran-U.S. Claims Tribunal through the Algiers Accords cannot be read to waive immunity for the resolution of claims by any entity or person other than Iran and Iranian nationals before the Tribunal, and certainly cannot be understood to be a waiver of sovereign immunity over U.S. Treasury funds or consent to jurisdiction over such funds by United States courts.

II. THE POLITICAL QUESTION DOCTRINE PRECLUDES APPOINTMENT OF A RECEIVER TO "STAND IN IRAN'S SHOES" AT THE TRIBUNAL

Even if the Court were to determine that the appointment of a receiver at the Tribunal would not violate principles of sovereign immunity, it nonetheless would be barred from interfering with the operation and implementation of the Algiers Accords—a decidedly political question. In Baker v. Carr, 369 U.S. 186, 217 (1962), the Supreme Court identified the primary

factors relevant to the political question inquiry, any one of which would, if present, render a dispute nonjusticiable:

> Prominent on the surface of any case held to involve a political question is found [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

The existence of several of these factors in the present case, including the commitment of the issue to the political branches and the potential for embarrassment to the United States, demonstrates that the Court cannot grant the relief requested by the plaintiffs.

"Over the years, the precedent that questions of foreign relations lie within the sphere of political questions committed to the other branches to the exclusion of the judiciary became deeply ingrained." Antolok v. United States, 873 F.2d 369, 380 (D.C. Cir. 1989). One of the core aspects of this precedent is the notion that treaties and other agreements among nations "are largely political questions best left to the political branches of the government, not the courts, for resolution." Kucinich v. Bush, 236 F. Supp. 2d 1, 16 (D.D.C. 2002); see also Antolok, 873 F.2d at 381 ("While the treaty power of the Executive expressly involves the participation of the Legislature, nowhere does the Constitution contemplate the participation by the third, non-political branch, that is the Judiciary, in any fashion in the making of international agreements . . . ."); Holmes v. Laird, 459 F.2d 1211, 1215 (D.C. Cir. 1972) ("It is not surprising, then, that many questions arising in connection with our treaties with other governments have been held to be nonjusticiable."); Bancoult v. McNamara, 370 F. Supp. 2d 1, 14 (D.D.C. 2004) ("Because this particular matter involves the entry by the United States and Britain into an

international agreement and the execution of this agreement . . ., the political question doctrine precludes review of this case.").

As previously discussed, plaintiffs request that this Court interfere with the ongoing Tribunal process of arbitrating claims between the two governments by replacing Iran, one of the parties to the Algiers Accords, with a receiver. See 20 I.L.M. at 233. That receiver would attempt to "wrest control" of any involvement of Iran at the Tribunal, purportedly permitting the receiver to litigate and negotiate any present or future claim held by Iran "at a discount" to the United States, to fire Iran's attorneys, to endorse the name of Iran, to incur expenses in the name of Iran, and to review any documents from Iran that may aid the receiver. Pls.' Mem. in Supp. at 12, 17-18, 21. These actions would all occur under the continuing oversight and jurisdiction of this Court, through whom the receiver acts as its officer. See, e.g., Porter v. Sabin, 149 U.S. 473 (1893); Crowley v. Ickes, 83 F.2d 573, 576 (D.C. Cir. 1936).

By divesting Iran of its place at the Tribunal and, in effect, assuming jurisdiction over the operations of the parties at the Tribunal, the Court would be taking a direct role in the implementation of the Algiers Accords. The D.C. Circuit has flatly rejected such a role for courts in the management of international agreements, including one established for the precise purpose of resolving the claims of its citizens against a foreign state, as such a case is "clearly, . . . not one of a domestic, non-political character":

> Under such circumstances, there is no reason or excuse for judicial interference. Such interference could result only in embarrassment to the political arm of the government in its conduct of the international affairs of the nation.
>
> This is none the less true when the treaty or executive agreement provides, as was done in the present case, for a commission to settle the amounts of claims of citizens of the United States against the government of another nation. The compact is between the two governments; the citizens are not parties thereto; and no provision is made or contemplated therein, for submitting any question to the courts. . . . As between the United States and Germany, indeed as between the United States and American claimants, the money received from Germany was in

> strict law the property of the United States, and no claimant could assert or enforce any interest in it so long as the government legally withheld it from distribution. And it was expressly agreed that any award made should be, as between the two governments, final and conclusive until set aside by agreement between them.

Z & F Assets Realization Corp. v. Hull, 114 F.2d 464, 472 (D.C. Cir. 1940), aff'd on other grounds, 311 U.S. 470 (1941). The Court here is similarly without a proper role and has no authority to interfere with the implementation of the Algiers Accords as proposed by plaintiffs.

Prudential considerations also support the application of the political question doctrine in these circumstances, where the appointment of a receiver may seriously upset the delicate balance of obligations set forth in the Algiers Accords, harm the interests of the United States before the Tribunal, likely face opposition by Iran and potentially the Tribunal itself, and, as a result, cause harm to the international reputation of the United States. The appointment of a receiver to negotiate claims before the Tribunal, to the exclusion of Iran, would likely be seen by Iran as a repudiation of the obligations of the United States pursuant to the Accords. After all, if plaintiffs' request were granted, and actually carried out, Iran would have no physical presence at the Tribunal and no ability to control the disposition of its claims. It is also likely that the Tribunal would view the appointment of a receiver, and any attempted interference by plaintiffs in the Tribunal's arbitration of claims, as a failure of the United States to comply with the arbitration process set forth in the Algiers Accords. Such an action would set up a conflict of jurisdiction with the Tribunal that would be an unprecedented interference into matters exclusively within the foreign affairs powers of the political branches of government.

As the D.C. Circuit has explained, in quoting the language of the Supreme Court's decision in the Head Money Cases, 112 U.S. 580 (1884), "[a] treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and

the honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress. . . ." Z & F Assets, 114 F.2d at 470. Accordingly, the foreign policy questions raised by enforcement of executive accords "uniquely demand single-voiced statement of the Government's views." Antolok, 873 F.2d at 384 (internal quotation omitted); see also Hwang Geum Joo v. Japan, 413 F.3d 45, 52 (D.C. Cir. 2005) (declining to interfere with negotiated position of the Executive regarding treaty); Kucinich, 236 F. Supp. 2d at 16 ("With treaties, in particular, a single voice is needed. . . ."). Plaintiffs would have this Court interfere with the operation of the Tribunal's arbitration process and assume jurisdiction over an international agreement, negotiated by the executive, to the exclusion of a sovereign party to that agreement. "No well-regulated government has ever sanctioned a principle so unwise, and so destructive of national character."[5] Z & F Assets, 114 F.2d at 470 (internal quotation omitted).

CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court deny plaintiffs' Motion for Appointment of a Receiver for Iran at the Tribunal.

[5] Even assuming that the Court had the authority to appoint a receiver in the present case, these same prudential concerns would weigh against such action. One of the factors that determines whether appointment of a receiver is appropriate in a given case is the "probability that harm to moving party by denial of appointment would outweigh injury to parties opposing appointment." Brill & Harrington Investments v. Vernon Sav. & Loan Ass'n, 787 F. Supp. 250, 253 (D.D.C. 1992); see also Peterson, 563 F. Supp. 2d at 277 ("The appointment of a receiver is an equitable remedy of rather drastic nature available at the discretion of the court having jurisdiction of the subject matter and the parties."). Here, there is no showing that Iran's claims before the Tribunal, all of which continue to be the subject of active litigation, are at an imminent danger of loss. However, the danger posed to international relations from appointment is real and immediate.

Date: March 13, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2009, I caused a true and correct copy of the foregoing Statement of Interest to be served on Plaintiffs' counsel electronically by means of the Court's ECF system.

/s/ Eric R. Womack
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